

Serial No.: 10/604,286
Confirmation No.: 4430
Applicants: HELLAKER, Jan
Atty. Ref.: 07589.0033.PCUS00

IN RESPONSE TO THE OFFICE ACTION:

Applicant has amended claims 11 and 22. Claim 11 has been amended to correct typographical errors and word-forms (i.e. simultaneously to simultaneous), while claim 22 has been amended to reflect the proper dependency from claim 21 rather than claim 8 as noticed by the Office.

Independent claim 11 recites a system (and claim 22 recites a method) that automatically resolves conflict when simultaneous execution of a plurality of services occurs. The primary claims upon which the present Response focuses are:

11. (Currently Amended) A system for communication between at least one central station (10) and at least one remote mobile or stationary object by means of transmitting and receiving means wherein said at least one object (20, 24, 25) comprises a cellular phone module (202) which provides a private subscription for private usage by a driver or operator of the object (20, 24, 25) and a selectable service subscription for transmitting and managing at least one of the services including remote status information, malfunction, diagnostics and maintenance, technical and emergency assistance by means of the at least one central station (10), and wherein means is provided for automatically resolving conflict associated with simultaneous execution of a plurality of said services.

12. (Previously Presented) The system according to claim 11, wherein service subscription transmissions preempt private usage transmissions.

13. (Previously Presented) The system according to claim 11, wherein each service has a priority value assigned thereto for use in said automatic resolution of conflict.

14. (Previously Presented) The system according to claim 13, further comprising an assignment of highest priority to emergency assistance services so that on-going phone calls are interrupted in deference thereto.

21. (Previously Presented) A method for communication between at least one central station and at least one remote mobile or stationary object in a system wherein the at least one object has implemented a sleep mode (S), a standby mode (W) and a first service execution mode (T1), wherein the sleep mode is terminated when a wake up timer elapsed and the standby mode is activated in which the object waits for an incoming message from the service center via a cellular and/or a satellite communication for a predetermined period of time, after which the sleep mode is again activated if no message has been received or a requested service is activated if a related message has been received and decoded, and wherein a conflict concerning simultaneous execution of several services during service subscription is handled automatically by assigning and affecting a priority to each service and deactivating any services with a minor priority than the service with a first priority.

The subject matter of claim 11 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Timm *et al.* (US 5572204) and Hattori and further in view of Razavi *et al.* (US 6362730). The rejection made by the Office is substantially the same as the previous rejection. An amendment to the claim adding "and wherein means is provided for automatically resolving conflict associated with simultaneous execution of a plurality of said services" was not addressed in the final rejection. The additional paragraph which appears as the second full paragraph on page 3 of the final rejection dated June 9, 2005 does not address this amendment. Thus it is not reasonable to say it is obvious in light of the prior art cited by the Office.

The subject matter of claim 12 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Timm and Hattori and further in view of Razavi. It is expressly stated that Timm is silent on the subject, but despite its silence, claim 12 was rejected - - as Applicant best understands - - because one skilled in the art would have provided such a prioritization feature if there had been only one channel of communication, but where multiple channels are provided, the feature would not be necessary and therefore it would not be provided.¹ The Office took official notice "that this 'concept' is similar to Quality of Service applications which are well known in the art and provided more bandwidth to high(er) priority users/applications as needed and will preempt any low(er) priority users/traffic if bandwidth becomes constrained."

¹ In fact, it is equally likely that no provision was made for resolving conflict - and especially on a priority basis as presently recited by Applicant - for instance, one service, once initiated, could be allowed to complete before another commences without any "priority" aspect between the communications.

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Applicant respectfully traverses the Office's use of official notice in this regard. According to MPEP §2144.03(a), "[o]fficial notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." Also, "[i]t is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. MPEP §2144.03(a). Further, "[t]he applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made." MPEP §2144.03(b).

As previously stated by Applicant, this priority handling is not well known in the art, and especially not so well known that official notice maybe taken. Applicant respectfully requests that the Office provide prior art evidence demonstrating that it is in fact well-known in the art. The provision of such evidence by the Office is appropriate because the Applicant has appropriately traversed the official notice and the MPEP §2144.03(c) requires that "the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained." The Quality of Service applications as discussed result in a situation where bandwidth is being used for possible simultaneous events. This application does not concern bandwidth usage and instead is concerned with prioritization of discrete service connections with wireless communication service.

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The teaching of Razavi is to use a different communication means for each service event. The fact that Timm only uses one does not require that a system with only one communication means, like Timm, inherently prioritizes the service events if more than one is simultaneously requested. It is possible that there simply is no service connection provided for a requested service if a previously engaged communication is already open. The subsequent event may not be prioritized, and instead may not function. For example, without disclosure otherwise, it is equally possible that the subsequent communication is placed in sequence to follow the other. Applicant's invention uses conflict resolution and priority assignments to determine which communication among several is sent and whether to stop a previous communication midstream and begin the subsequently requested one. This solution is not obvious in light of the prior art cited by the Office. Thus, Applicant believes that the claim is patentable.

Independent claim 21 (method) recites that among the several possible subscription services, priority values are assigned and execution conflicts therebetween are resolved based thereupon. Antecedent basis is found at least in paragraphs [0027], [0031], [0045] and claim 10 of the application as originally filed.

The subject matter of claim 21 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Timm and Hattori and further in view of Razavi. In the rejection, it is stated that "[t]he examiner notes that if only one communications means exists, then one skilled would need to ensure that service data is prioritized and is based on priority since simultaneous communications is not possible." No basis for this statement is given by the Office. It is not proper to be taken under official notice as stated above. The use of official notice is not proper in

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the rejection of claim 21 and Applicant respectfully requests that the basis for rejection be withdrawn. The Office further suggests that it would be "obvious to one of ordinary skill in the art at the time of applicant's invention to modify Timm/Hattori, such that wherein a conflict concerning simultaneous execution of several services during service subscription is handled automatically by assigning and affecting a priority to each service and deactivating any services with a minor priority than the service with a first priority, to provide quality of service whereby higher priority messages preempt lower priority messages as required." Nothing cited by the Office suggests such combination would be obvious to one skilled in the art. Applicant respectfully requests that the Office produce evidence to support this assertion as required by MPEP §2144.03.

It is respectfully asserted that the absence of any disclosure, a teaching, or even a suggestion of Applicant's claimed feature in clearly related art supports the patentability of Applicants claimed invention, not its obviousness.² The need for Applicant's solution in these prior art endeavors is recognized by the Office; therefore, the fact that each is completely devoid of even an intimation toward Applicant's solution is clearly an indicia of the patentability of Applicant's claimed invention, and not vice-versa.

² While finding that the individual elements of the invention were "not novel per se" the court found "nothing in the prior art suggesting Scoggin's unique combination of these old features . . . as would solve the . . . problems which for years beset the insecticide industry." It concluded that "the . . . [device] meets the exacting standard required for a combination of old elements to rise to the level of patentable invention by fulfilling the long-felt need with an economical, efficient,

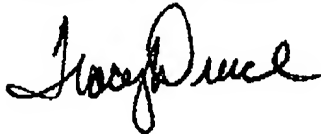
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In view of the above discussion, arguments and evidence, it is respectfully asserted that the application is presently in condition for allowance. Therefore, a Notice of Allowance is respectfully solicited.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Order No. 07589.0033.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner should directly contact the undersigned by phone to further the discussion.

Respectfully submitted,



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utilitarian apparatus which achieved novel results and immediate commercial success." *Graham v. John Deere Co.*, 383 U.S. 1, 30 (U.S. 1966).